

Date signed June 12, 2008



PAUL MANNES
U. S. BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
at Greenbelt**

IN RE:	:	
	:	
KEVIN W. PALMER	:	Case No. 08-11619PM
	:	
Debtor	:	
-----	:	
WELLS FARGO BANK, N.A.	:	
Movant	:	
vs.	:	
	:	
KEVIN W. PALMER	:	
ROBIN RANDOLPH TALBOTT,	:	
Co-Debtor	:	
Respondents	:	
-----	:	

MEMORANDUM OF DECISION

Before the court is the Motion for Relief from Stay filed by Wells Fargo Bank, N.A. ("Wells Fargo"). Wells Fargo is secured by the first lien on property of the Debtor and his spouse, Robin Randolph Talbott, located at 26626 Ridge Road, Damascus, Maryland. At the time the Motion was filed the amount due was said to be \$116,636.38. There is no testimony as to the value of the subject property other than Debtor's valuation in Schedule D of \$400,000.00. Inasmuch as the moving party has the burden of proof on the issue of equity in the property under § 362(g)(1) of the Bankruptcy Code, the court finds that the Movant is massively oversecured. The property is also subject to a lien securing one Richard L. Toomey that is said

to be \$220,000.00. No proof of claim was filed by Mr. Toomey, and the court understands that he is a business associate of Mr. Palmer or his wife.

This is the third filing by the Debtor or his wife, Robin R. Talbott. Previously, she filed Case No. 07-12812 on March 27, 2007, that was later dismissed on November 27, 2007, upon her failure to confirm a plan. Subsequently, she filed Case No. 08-10053 on January 2, 2008, and this case is pending. Kevin W. Palmer filed this case under Chapter 13 on February 6, 2008.

The Debtor's spouse owns very valuable property known as 122 S. Van Buren Street, Rockville, Maryland, with her brother. That property is subject to an Order of court granting relief from the stay effective November 10, 2008.

The response filed by the Debtor to the instant Motion does not take issue with the facts stated in Wells Fargo's Motion, only with its conclusion. Mr. Palmer explains that he and his wife, who are essentially unemployed, are involved in a project "to finish the efficient manufacture, production and sale of bone marrow testing reagents for the transplant of bone marrow in leukemia and lymphoma patients." He anticipates that the company will be funded successfully and that will enable them to meet the obligations to the secured creditors.

Wells Fargo argues at paragraph 5 of its Motion that it lacks adequate protection for its security interest and continues to be irreparably harmed by the continuation of the automatic stay and that constitutes cause for relief from the stay. The court disagrees. An equity cushion in the magnitude presented in this case has been uniformly held to constitute adequate protection of the interests of the secured party. *See, In re Mendoza*, 111F.3d 1264, 1272 (CA5 1997); *In re Nichols*, 440 F.3d 850 (CA6 2006); *In re Mellor*, 734 F.2d 1396, 1400 (CA9 1984). "Case law has almost uniformly held that an equity cushion of 20% or more constitutes adequate protection." *In re Kost*, 102 B.R. 829, 831 (BC Wyo. 1989). Furthermore, from a practical standpoint, Wells Fargo has substantial protection of its interest in the form of the junior lien. The only party at risk in this situation is Mr. Toomey, whose claim is scheduled in the sum of \$200,000.00. While Mr. Toomey has not seen fit to file a proof of claim in any of the three Palmer-Talbott cases, it is impossible to conceive that he would allow the property to go to a foreclosure sale that would wipe out his interests. His position is a further guaranty of the Wells Fargo loan.

An appropriate order will be entered.

cc:

Brian S. McNair, 1861 Wiehle Avenue, Suite 300, Reston, VA 20190

Kevin W. Palmer, 122 S. Van Buren Street, Rockville, MD 20850

Robin Randolph Talbott, 122 S. Van Buren Street, Rockville, MD 20850

Timothy P. Branigan, Esquire, P.O. Box 1902, Laurel MD 20725-1902

Nancy S. Grigsby, Trustee, P.O. Box 958, Bowie, MD 20718

End of Memorandum